

### **REMARKS/ARGUMENTS**

The Examiner is thanked for their review of the application.

Claims 1-14 and 18-25 remain in this application. Claims 1, 8-14, 21-23 have been amended. Claims 24-25 have been cancelled without prejudice.

In the Office Action dated March 5, 2007, the Examiner has rejected Claims 8-14, 21-23 and 25 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding this rejection, the Examiner has stated that:

“Claim 8. The preamble of the claim indicates that the claim is directed to an apparatus, while the body of the claim recites software instructions. It is not clear to what extend the software instructions represent structural elements. The remaining claims are rejected as being dependent on claim 8.”

In the same Office Action the Examiner also rejected Claims 8-14, 21-23 and 25 under 35 U.S.C. § 101 “because the claimed invention is directed to non-statutory subject matter. Claim 8, the preamble of the claim indicates that the claim is directed to two statutory classes of invention, the apparatus and a product, and, therefore, is considered to be directed to a non-statutory subject matter.”

The Examiner then suggested the following language to obviate the claim rejections under 35 USC § 112 and 35 USC § 101:

“8. A computer-readable medium having computer-readable instructions embedded therein, which, when executed by a computer, causing said computer to implement a method for forming a plurality of stores into a plurality of store clusters based on price optimization, and re-optimizing prices based on the plurality of store clusters, comprising:

collecting store specific information from a plurality of stores;

optimizing prices for a plurality of products for each individual store of the plurality of stores, and wherein the price optimization uses demand coefficients,

cost coefficients and optimization rules;

creating a plurality of store clusters from the plurality of stores based on the closeness of optimized prices of the plurality of products for each individual store, based on store specific information, and based on demand group structure of the plurality of products, and wherein the demand group structure of the plurality of products is based on substitutable products;

re-optimizing prices for the plurality of products for at least one of the plurality of store clusters, and wherein the re-optimizing of prices uses demand coefficients, cost coefficients and optimization rules; and

providing the re-optimized prices to the at least one of the plurality of store clusters.”

Accordingly, Applicants have amended Apparatus Claims 8-14, 21-23 in the manner suggested by the Examiner, and are now in allowable form.

In the same Office Action the Examiner also rejected Claims 1-5, 8, 9, 10-13 and 22 under 35 U.S.C. § 102(e) as being anticipated by Walser et al. (US 2006/0161504 A1), stating:

Walser et al. teaches a computer-implemented method for generating an optimized price, and a computer-readable medium having instruction to implement said method, comprising:

Claims 1 and 8,

collecting store specific information from a plurality of stores [0032];  
[0008];

optimizing prices for a plurality of products for each individual store of the plurality of stores, and wherein the price optimization uses demand coefficients, cost coefficients and optimization rules [0007]; [0008]; [0010]; [0011]; [0061];

creating a plurality of store clusters from the plurality of stores based on the closeness of optimized prices of the plurality of products for each individual store,

based on store specific information, and based on demand group structure of the plurality of products, and wherein the demand group structure of the plurality of products is based on substitutable products [0011]; [0012];

re-optimizing prices for the plurality of products for at least one of the plurality of store clusters, and wherein the re-optimizing of prices uses demand coefficients, cost coefficients and optimization rules [0014]; [0090]; [0092]; and

providing the re-optimized prices to the at least one of the plurality of store clusters [0014].

Claims 2, 3, 5, 9, 10, 12, 13, 22, see reasoning applied to claims 1 and 8.

Claims 4 and 11. Walser et al. teaches that the combinations further include assortment and promotion combinations [0078]; [0079].”

In the same Office Action the Examiner also rejected Claims 6, 7, 13, 14, 19, 20, 21 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Walser et al., stating:

“Claims 6, 7, 13, 14, 19. Walser et al. teaches all the limitations of Claims 6, 7, 13, 14, 19, except specifically teaching that the at least one constraint places *two* stores in the same cluster, or specifies a *maximum* number of clusters.

However, Walser et al. teaches that the invention may be extended to compute price schedules of portfolios of products while considering price schedules for groups of locations given price constraints between locations in the group, wherein inventory is distributed across a group of locations that are being optimized together [0011]; [0014], thereby suggesting any feasible combination of stores in a particular cluster.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Walser et al. to include that the at least one constraint places *two* stores in the same cluster, or specifies a *maximum* number of clusters, as suggested in Walser et al., because it would advantageously allow to determine an optimal feasible final solution, as specifically stated in Walser et al. [0061].

Claim 21, same reasoning as applied to claims 6, 7, 13, 14 and 19.”

In the same Office Action the Examiner also rejected Claims 20 and 23 under 35 U.S.C. § 103(a) as “being unpatentable over Walser et al. in view of Woo et al. (US 6,910,017), stating:

Claims 20 and 23. Walser et al. teaches all the limitations of Claims 20 and 23, except specifically teaching that said constraint places stores with a geographical closeness in the same cluster.

Woo et al. (Woo) teaches a computer-implemented method and system for optimizing prices, comprising:

creating a plurality of store clusters from the plurality of stores based on the closeness of the optimized prices of the plurality of products for each individual store (aggregating historical data into item classes and subclasses in accordance with an item hierarchy/parameter (C. 3 L. 64-67, C. 4 L. 1-47; C. 3, L. 5), wherein said clustering includes assortment and promotion combinations (C. 5, L. 61-63; C. 7, L. 9-12); and wherein the stores can be clustered based on a geographical location (all stores in New Jersey) (C. 4, L. 27-29).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify to include that the combinations further include that said constraint places stores with a geographical closeness in the same cluster, as disclosed in Woo et al., because it would advantageously allow to use different versions of the general model equation to reflect various factors and consider various constraints, as specifically stated in Woo et al. (C. 5, L. 61-63; C.7, L. 9-12).”

In the same Office Action, the Examiner objected to Claims 24, 25 “as being dependent upon a rejected base, claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.”

Base method Claim 1 and base apparatus Claim 8 have both been amended to include the limitations of Claims 24, 25, respectively, as suggested by the Examiner. Hence, independent Claims 1, 8 together with their respective dependent Claims 2-7, 9-14, 21-23 are now all allowable because they all directly or indirectly include the same limitations of cancelled Claims 24, 25.

In sum, Claims 1-14 18-23 remain in this application and are now believed to be allowable. Apparatus Claims 8-14, 21-23 have been amended and are now believed to be in allowable form. Base Claims 1, 8 have also been amended and are now believed to be allowable. Dependent Claims 2-7, 9-14, 18, 21-23 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent Claims 1, 8 for at least the same reasons. Hence, Examiner's rejection of dependent Claims 2-7, 9-14, 21-23 are rendered moot in view of the amendment to base Claims 1, 8. Applicants believe that all pending Claims 1-14 18-23 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner.

The commissioner has been authorized via EFS to charge our credit card in the amount of \$120.00 to cover the one-month extension fee. The commissioner is authorized to charge any fees that may be due to our Deposit Account No. 50-2766 (Order No. DEM1P010). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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Respectfully Submitted,

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